CHONG CHOON WAH

v.

LAM SAU FONG & ANOR.

HIGH COURT MALAYA, IPOH
ONG SEE SENG J
[CIVIL APPEAL NO. 12-17-87]
26 JANUARY 1990

CIVIL PROCEDURE: *Section 65 of the Subordinate Courts Act 1948 - Civil jurisdiction of Sessions Court - RM25,000 - Jurisdiction increased on 1 August 1987 - On 11 July 1987 total award of RM34,000 made - Whether the award was in excess of jurisdiction - Both parties equally blamed for the accident - Question of contribution.*

In this case, on 11 July 1987 the learned President gave a total award of RM34,000 in favour of the respondents. The jurisdiction of the Sessions Court was RM25,000. The jurisdiction was increased with effect from 1 August 1987. It was submitted that the award was in excess of jurisdiction.

Further, the learned President found the 1st respondent and appellant to be equally blamed for the accident but dismissed the appellant's counterclaim for contribution.

Held:

[1] That the award should not exceed the jurisdiction of the Court. The award was therefore varied to bring it within the jurisdiction of the Sessions Court.

[2] Since the 1st respondent and the appellant were equally to be blamed for the accident the appellant's counterclaim against the 1st respondent for contribution to the extent of 50% was allowed.

[3] The awards of the 1st and 2nd respondents are to be varied to bring the awards within the jurisdiction of the Sessions Court.

[4] The award for general damages to the 1st respondent to be RM11,281 and RM11,510 for the 2nd respondent.

[Order accordingly.]

Cases referred to:
Brincat & Anor. v. Kilsby & Ors. [1983] VR 625
Doyle & Ors. v. Talbot Motor Co. Ltd. [1988] 1 WLR 980

Legislation referred to:
Subordinate Courts Act 1948, s. 65

For the appellant - Sumathi
For the respondent - Sukhdev

JUDGMENT

Ong See Seng J:

I am just giving a gist of the judgment. Should the necessity arise I shall give a fuller written judgment.

This is an appeal against the decision of the learned President given on 11 July 1987.

After reading the record of appeal and hearing submissions of Counsel I am not satisfied that this is a proper case that I should displace the learned President's conclusion. It is my considered opinion that the appellant has failed to show that the learned President's view was plainly wrong and that any advantage which he enjoyed by having seen and heard the witnesses was not sufficient to explain his conclusion. Further the award for general damages was not manifestly excessive for this Court to interfere.

However the appellant has raised an additional ground of the award being in excess of the Sessions Court's jurisdiction. It is submitted that prior to the increased jurisdiction effective 1 August 1987 the Sessions Court had a civil jurisdiction of only up to RM25,000 under s. 65 of the Subordinate Courts Act 1948. As the total award in respect of the 1st and 2nd respondents amounted to about RM34,000 it was submitted this was in excess of his jurisdiction to make the said awards.

I am persuaded by the judgment in Supreme Court Victoria in *Brincat & Anor. v. Kilsby & Ors.* [1983] VR 625 where it was held that the total amount claimed in the action should not exceed the jurisdiction of the Court. The same decision was arrived at by the Court of Appeal in *Doyle & Ors. v. Talbot Motor Co. Ltd.* [1988] 1 WLR 980. In the circumstances I would vary the awards of the 1st and 2nd respondents so as to bring the awards within the jurisdiction of the Sessions Court. The award for general damages to the 1st respondent will be RM11,281 and to the 2nd defendant RM11,510. The respective awards for special damages stand.

The learned President in holding that the 1st respondent and the appellant were equally to be blamed for the accident has erred, in my opinion, when he dismissed the counterclaim by the appellant against the 1st respondent. Accordingly I would allow the appellant's counterclaim against the 1st respondent for contribution to the extent of 50%.

Also found at [1990] 1 CLJ 1134